

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GAIL SMITH and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, PA

*Docket No. 97-2656; Submitted on the Record;  
Issued August 12, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained a traumatic injury in the performance of duty, causally related to factors of her federal employment.

On January 23, 1997 appellant, then a 44-year-old flat sorter machine clerk, filed a CA-1 claim for traumatic injury alleging that on January 16, 1997 as she was keying mail and loading the machine she began to have pain in her right shoulder. Appellant sought medical treatment with Dr. John M. Bednar, a Board-certified orthopedic surgeon, on January 17, 1997.

By report of that date, Dr. Bednar noted as appellant's history that she had been working regular duty and that over the last several weeks she had developed right shoulder pain about the anterior aspect which increased with forward flexion and overhead arm use. Upon examination he found tenderness at the right acromioclavicular (AC) joint and a positive impingement sign and Dr. Bednar diagnosed right shoulder rotator cuff tendinopathy. He recommended light duty with limited lifting and physical therapy.

By letter dated February 4, 1997, the Office of Workers' Compensation Programs requested further information. On February 19, 1997 appellant responded stating that she was keying mail when the pain in her right shoulder started, that the pain went on for eight hours and that she had informed her supervisor.

On a February 21, 1997 attending physician's report Dr. Bednar repeated his diagnosis and findings upon examination and checked "yes" to the question of whether the condition found was caused or aggravated by an employment activity.

By decision dated March 14, 1997, the Office rejected appellant's claim finding that the evidence was insufficient to establish her claim. The Office found that the attending physician's report did not indicate a history of injury and the January 17, 1997 medical narrative indicated that appellant's right shoulder pain developed over a period of several weeks.

Appellant requested reconsideration and in support she submitted a March 28, 1997 report, from Dr. Bednar and a March 28, 1997 prescription, upon which he had written "R[ight]

rotator cuff tendinopathy is a work-related injury.” Dr. Bednar noted “MRI [magnetic resonance imaging] positive impingement with partial tear [of the] rotator cuff, x-ray [revealed] DJD [degenerative joint disease].” The March 28, 1997 medical narrative noted “It is my opinion that the rotator cuff tendinopathy is directly related to [appellant’s] work activities. This occurs from use of the arm with rubbing of the rotator cuff against a degenerative spur at the AC joint and wearing through of the rotator cuff. To my knowledge there is no specific single traumatic episode that has resulted in this condition.” It also indicated that appellant’s right shoulder symptoms were increased with keying activities at work.

By decision dated July 9, 1997, the Office denied modification of the prior decision finding that the evidence submitted was insufficient to warrant modification. The Office found that Dr. Bednar’s reports were unrationalized and that he did not demonstrate an understanding of the need to load the machine or of her other duties.<sup>1</sup> The Office further argued that Dr. Bednar did not explain how symptoms existing for several weeks prior were causally related to a traumatic injury occurring on January 16, 1997. The Office found his opinion to be speculative and of diminished probative value.<sup>2</sup>

The Board finds that appellant has failed to establish that she sustained a traumatic injury in the performance of duty, causally related to factors of her federal employment.

Section 10.5(15) of Title 20 of the Code of Federal Regulations defines traumatic injury as “a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. The injury must be caused by a specific event or incident or series or events or incidents within a single workday or work shift.”

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place and in the manner alleged.<sup>3</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>4</sup>

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<sup>1</sup> The Board notes that Dr. Bednar had been appellant’s treating physician for a previous claim No. A030152936 for work-related left shoulder problems, and had, with an understanding of her job requirements, returned her to full duty following rehabilitation.

<sup>2</sup> Thereafter, the Office received further medical evidence which was not considered by the Office for its most recent merit decision and which, therefore, cannot now be considered by the Board; *see* 20 C.F.R. § 501.2(c).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant’s statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

<sup>4</sup> *Id.* For a definition of the term “injury,” *see* 20 C.F.R. § 10.5(a)(14).

In the instant case, the evidence of record does not support that appellant sustained a traumatic employment incident. Although appellant stated on her claim form that she began having right shoulder pain on January 16, 1997 and consulted Dr. Bednar the next day, his report indicated that over the preceding several weeks she had developed right shoulder pain around the anterior aspect which increased with forward flexion and overhead arm use. When a further explanation of the incident cause was requested by the Office, appellant responded that she was keying mail when the right shoulder pain started and that it continued for eight hours. No specific traumatic incident was identified. Thereafter, in a March 28, 1997 medical narrative Dr. Bednar noted that appellant's rotator cuff tendinopathy occurred from continued use of appellant's arm with rubbing of the rotator cuff against a degenerative spur at the AC joint causing a wearing through of the rotator cuff. The Board notes that this mechanism of injury is not consistent with a traumatic injury as defined above, as it implicates degenerative changes with use over time. Further, the Board notes that Dr. Bednar specifically stated, "To my knowledge there is no specific single traumatic episode that has resulted in this condition." This evidence, therefore, does not support appellant's traumatic injury claim. Further, she has submitted no supporting factual evidence establishing that a specific traumatic incident occurred, indicating in her own statement that the pain just started with keying and continued for weight hours.

Consequently, appellant has failed to establish the first element of her traumatic injury claim.<sup>5</sup>

Accordingly, the decisions of the Office of Workers' Compensation Programs dated July 9 and March 14, 1997 are hereby affirmed.

Dated, Washington, D.C.  
August 12, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>5</sup> Upon return of the case record, the Office should develop the record with respect to an occupational disease claim.